

a footnote, and in that case, the plaintiffs pleaded federal jurisdiction based on CAFA. Reply Br. (Doc. 126) at 1-2.¹

The Court holds *Buetow* is controlling. A sentence in *Buetow* explains the procedural backdrop of the case, and at the end of that sentence is a footnote. 650 F.3d at 1182. The footnote states, “Federal jurisdiction in this case is based upon the Class Action Fairness Act, 28 U.S.C. § 1332(d). That jurisdiction continued despite the district court’s denial of Plaintiffs’ motion for class certification.” *Id.* at n.2 (citing *Cunningham Charter Corp. v. Learjet, Inc.*, 592 F.3d 805, 806 (7th Cir. 2010) (Posner, J.) (reversing district court’s order of remand and joining other circuits in holding that once CAFA jurisdiction is properly invoked, it is not lost by a subsequent denial of class certification). The unequivocal language in the footnote combined with the citation to *Cunningham* convinces the Court that the footnote is a holding and not merely dicta. See *Littleton v. State Farm Mut. Auto. Ins. Co.*, No. 5:15-CV-5007, 2015 WL 128577, at *9 (W.D. Ark. Jan 8, 2015) (“The Eighth Circuit has definitely ruled that CAFA jurisdiction ‘continue[s] despite the district court’s denial of Plaintiffs’ motion for class certification.’”) (citing and quoting the *Buetow* footnote). And since it is a holding of the Eighth Circuit Court of Appeals, it is binding on this Court.

Because the Court previously found CAFA jurisdiction here, that jurisdiction endures notwithstanding the denial of class certification. Plaintiff’s motion is DENIED.

IT IS SO ORDERED.

Date: December 22, 2015

/s/ Greg Kays
GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

¹ Plaintiffs further contend, “This case was hijacked from state court, where it rightfully belongs. CAFA jurisdiction was never pleaded by Plaintiffs and never existed in this case.” Reply Br. at 2. Plaintiffs overlook the Court’s previous order (Doc. 33) finding CAFA jurisdiction does, in fact, exist.